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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,465	04/12/2006	Reinhard Heine	016906-0495	3203
22428 7590 07/11/2008 FOLEY AND LARDNER LLP SUITE 500 3000 K STREET NW WASHINGTON, DC 20007				
EXAMINER				
LEO, LEONARD R				
ART UNIT		PAPER NUMBER		
3744				
MAIL DATE		DELIVERY MODE		
07/11/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



# Office Action Summary

**Application No.**

10/575,465

**Applicant(s)**

HEINE, REINHARD

**Examiner**

Leonard R. Leo

**Art Unit**

3744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 April 2008.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 5-9 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☒ Claim(s) 5 is/are allowed.  
6) ☒ Claim(s) 1 and 6-9 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/CDC)  
4) ☐ Interview Summary (PTO-413)  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_  
Paper No(s)/Mail Date \_\_\_\_\_



### **DETAILED ACTION**

The preliminary amendment filed on April 12, 2006 has been entered. Claims 2-3 are cancelled, and claims 1 and 4-9 are pending.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4 and 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamaguchi et al in view of Mansoux (FR 2 549 593).

Yamaguchi et al discloses all the claimed limitations except a larger gap between the connection wall of the coolant box and auxiliary heat exchanger than the opposite wall.

Mansoux discloses a radiator comprising a coolant box 1 containing an oil cooler 4 having a connection 19 on a wall thereof, and a larger gap between the connection wall of the coolant box and auxiliary heat exchanger than the opposite wall for the purpose of accommodating the bearing plate 11 with seals 17, 18.

Since Yamaguchi et al and Mansoux are both from the same field of endeavor and/or analogous art, the purpose disclosed by Mansoux would have been recognized in the pertinent art of Yamaguchi et al.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Yamaguchi et al a larger gap between the connection wall of



the coolant box and auxiliary heat exchanger than the opposite wall for the purpose of accommodating the bearing plate with seals as recognized by Mansoux.

Regarding claim 6, Figure 8 discloses a pipe connection centrally located between the oil cooler 202.

Regarding claim 7, Yamaguchi et al (column 4, lines 30-33) discloses the coolant box 211 is composed of resin. The recitation of "injection-molded" is considered to be a method limitation in an apparatus claim, which bears no patentable weight in this instance. See MPEP 2113.

Regarding claim 8, Figure 25 of Yamaguchi et al discloses plate-type oil coolers are well known. It would have been obvious to one of ordinary skill in the art to simply substitute one known element for another to obtain predictable results. *KSR Int'l Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1395 (2007).

***Allowable Subject Matter***

Claim 5 is allowed.

***Response to Arguments***

The rejection under 35 U.S.C. 112, second paragraph, is withdrawn in view of the claim amendment.

The anticipatory rejections in view of Villeval (FR 2 521 277) and Yamaguchi et al are withdrawn in view of the claim amendment.

Applicant's arguments have been fully considered but they are not persuasive.

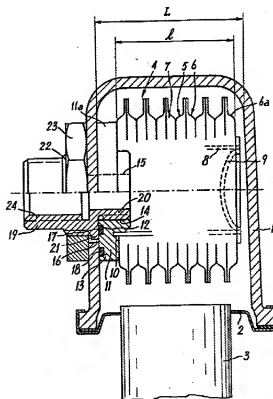
With respect to applicant's remarks, the Examiner does not agree that the drawings cannot be used as prior art. MPEP 2125 states in part:



PROPORTIONS OF FEATURES IN A DRAWING ARE NOT EVIDENCE OF  
ACTUAL PROPORTIONS WHEN DRAWINGS ARE NOT TO SCALE

When the reference does not disclose that the drawings are to scale and is silent as to dimensions, arguments based on measurement of the drawing features are of little value. See *Hockerson-Halberstadt, Inc. v. Avia Group Int 'l*, 222 F.3d 951, 956, 55 USPQ2d 1487, 1491 (Fed. Cir. 2000) (The disclosure gave no indication that the drawings were drawn to scale. "[I]t is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue."). *However, the description of the article pictured can be relied on, in combination with the drawings, for what they would reasonably teach one of ordinary skill in the art. In re Wright*, 569 F.2d 1124, 193 USPQ 332 (CCPA 1977)(emphasis added).

Therefore, when read in full context, drawings may be used as prior art, wherein one of ordinary skill in the art would recognize that Mansoux teaches a larger gap between the connection wall of the coolant box and auxiliary heat exchanger than the opposite wall for the purpose of accommodating the bearing plate 11 with seals 17, 18.





***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leonard R. Leo whose telephone number is (571) 272-4916. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl Tyler can be reached on (571) 272-4834. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/ LEONARD R. LEO /  
PRIMARY EXAMINER  
ART UNIT 3744

July 12, 2008